

FOR THE DISTRICT OF DELAWARE

In re:

Debtors.

Case No. 01-1139 (JKF)

**Related Docket Nos. 5815, 5833, 5839,
5835, 5927, 5950, 5956**

Hearing Date: To be determined

FUTURE CLAIMANTS' REPRESENTATIVE'S REPLY

Committee”) has filed limited objections to David T. Austern’s (the “Future Claimants’ Representative” or “Mr. Austern”) applications to employ Swidler Berlin Shereff Friedman, LLP (“SBSF”) as bankruptcy counsel, Phillips, Goldman & Spence, P.A. (“PG&S”) as Delaware co-counsel and CIBC World Markets Corp. (“CIBC”) as financial advisors, the PD Committee does not dispute Mr. Austern’s right to retain counsel and other professionals under the Bankruptcy Code. See PD Committee’s Limited Objections, at pp. 2-3, para. 6 [Docket Nos. 5927, 5956 and 5950]. The PD Committee states only that it seeks to “reserve its rights” with respect to the retention of SBSF, PG&S and CIBC “pending the outcome of the appeals” of the Order appointing Mr. Austern as the Future Claimants’ Representative (the “Appointment Order”).¹ *Id.*

¹ See Order Granting Application of Debtors Pursuant to 11 U.S.C. §§ 105, 327 and 524(g)(4)(B)(i), for the Appointment of a Legal Representative for Future Asbestos Claimants [Docket No. 5645]. The PD Committee and certain insurers noted appeals of the Appointment Order. Those appeals have not yet been docketed with the District Court.

There has been no stay of the effectiveness of the Appointment Order; indeed, the PD Committee and the other objectors elected not even to request such a stay. So while the PD Committee does not specify what “rights” it is reserving,² the practical interpretation of what the PD Committee must mean is that it believes that Mr. Austern should be authorized to employ and retain SBSF, PG&S and CIBC only for so long as he serves as the Future Claimants’ Representative. This can be appropriately addressed by the Court without denying Mr. Austern’s applications to employ his professionals.

The Future Claimants’ Representative respectfully requests that the Court include the language “*so long as David T. Austern serves as the legal representative for future asbestos claimants against the Debtors*” at the end of paragraph 2 of each of the proposed orders submitted by the Future Claimants’ Representative along with his applications to employ his professionals.³ This Court adopted the same language in In re Combustion Engineering, Inc., Case No. 03-10495 (Bankr. D. Del. 2003) in connection with its Orders authorizing Mr. Austern to retain and employ professionals when Mr. Austern’s appointment in that case was granted initially on an interim basis. See, e.g., Order Authorizing the Retention and Employment of Swidler Berlin Shereff Friedman, LLP as Bankruptcy Counsel to David T. Austern as Future Claimants’ Representative Pursuant to Section 1103(a) of the Bankruptcy Code [Combustion Engineering Docket No. 604], a copy of which is attached hereto as Exhibit A.


² Mr. Austern assumes that the PD Committee, by its reservation of rights, is not seeking to put at risk the compensation earned by Mr. Austern and his professionals while the appeals are pending. Such a reservation could cause Mr. Austern and his professionals to stand down during that period, effectively creating a stay and further delaying these cases.

³ The Future Claimants’ Representative has submitted amended proposed orders for the appointment of each of his professionals with this Reply, which are attached as Exhibit B.

WHEREFORE, the Future Claimants' Representative, by and through his proposed counsel, respectfully requests that the Court (1) enter an Order granting the Future Claimants' Representative's applications to retain and employ SBSF as his bankruptcy counsel, PG&S as his Delaware co-counsel and CIBC as his financial advisor, for so long as he serves as the Future Claimants' Representative; (2) overrule the PD Committee's limited objections; and (3) grant such other and further relief as is appropriate.

July 14, 2004

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, DEBRA O. FULLEM, do hereby certify that I am over the age of 18, and that on July 14, 2004, I caused the *Future Claimants' Representative's Reply to Limited Objections of the Official Committee of Asbestos Property Damage Claimants to Applications of Future Claimants' Representative for Authorization to Employ Swidler Berlin Shereff Friedman, LLP as Bankruptcy Counsel, Phillips, Goldman & Spence, P A. as Local Bankruptcy Counsel and CIBC World Markets Corp. as Financial Advisor* to be served upon those persons as shown on the attached Service List by first class mail, postage prepaid.

Under penalty of perjury, I certify the foregoing to be true and correct.



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